

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NICOLE VERGARA, BELLA 77 CORP.,

Plaintiffs,

-against-

Rule 26(f) Report
CV 21-6667 (KAM)(ARL)

TOWN OF BABYLON, NY TIMOTHY BESEMER,
ELIZABETH WHITE, RACHEL SCELFO, JERRY
GUARINO, JOHN AND JANE DOES 1-10,

Defendants.
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Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on January 19, 2022 and was attended by:

J. Remy Green, Esq., counsel for plaintiff(s)

William D. Wexler, Esq., counsel for defendant(s).

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

1. INITIAL DISCLOSURES

Have the parties agreed to make initial disclosures?

X Yes No The proceeding is exempt under Rule 26(a)(1)(B).

If yes, such initial disclosures shall be made by February 18, 2022.

2. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

 Yes X No

If yes, describe the issue:

If yes, the parties agree that any motion related to venue or jurisdiction shall be filed by .

3. PARTIES AND PLEADINGS

a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed by Mar ch 14, 2022.

- b. If the case is a class action, the parties agree that the motion for class certification shall be filed by Not applicable.

4. MOTIONS

Are there any pending motion(s)? Yes X No

If yes, indicate which party filed the motion(s), and identify the motion(s) by name and docket number:

5. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand: The instant 1983 Action arises out of the Defendant Town of Babylon's attempts to prevent Plaintiffs' from opening and operating a legal business within the Town through the unconstitutional misuse of a secondary effects zoning ordinance to regulate conduct not included by the wording of the ordinance. The Plaintiffs' claims, broadly speaking, fall into two (2) distinct categories: 1. those claims seeking compensation for past violations of the Plaintiffs' civil rights; 2. those claims challenging and seeking declaratory judgment & injunctive relief regarding the constitutionality of Section 213 & *

6. DISCOVERY PROCEDURES

- a. The parties agree that all fact discovery shall be completed by January 13, 2023. The parties agree to schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and to file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so. If, after having met and conferred, the parties are unable to reach an agreement on any matter related to discovery, they may seek the Court's assistance by letter motion pursuant to Local Rule 37.3 and in accordance with Judge Lindsay's Individual Rules.
- b. Do the parties anticipate the production of ESI? X Yes No¹
If yes, describe the protocol for such production:

- c. Do the parties intend to seek a confidentiality order or claw back agreement? ²
If yes, such order or agreement shall be filed with the Court by Not applicable.

7. DISPOSITIVE MOTIONS

Any party planning on making a dispositive motion must take the first step in the motion process by within ninety (90) days of close of discovery.

8. EXPERT TESTIMONY

- a. Primary expert reports must be produced by within ninety (90) days of close of discovery.
- b. Rebuttal expert reports must be produced by within sixty (60) days after receipt of primary expert reports.
- c. All expert discovery shall be completed by thirty (30) days after receipt of rebuttal expert reports.

¹ See attachment A.

² See attachment B.

9. SETTLEMENT

Plaintiff(s) will make a settlement demand by after the completion of discovery.

Defendant(s) will respond by fifteen (15) days thereafter.

The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference. The Court refers cases to settlement throughout the year.

In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the settlement conference. The parties understand that they will be expected to comply fully with the settlement conference orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

10. RULE 16 PRETRIAL CONFERENCE

Upon receipt of this Form the court will schedule a Rule 16 conference by telephone.

11. CONSENT TO MAGISTRATE JUDGE

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)

 Yes X No

12. OTHER MATTERS

Indicate any other matters for the Court's consideration:

Dated: January 19, 2022


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